

CHAMBER ACTION

1 The Business Regulation Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to employee leasing companies; amending s.
7 468.521, F.S.; revising the criteria for appointment of
8 members of the Board of Employee Leasing Companies;
9 amending s. 468.525, F.S.; requiring that an applicant for
10 an initial license as an employee leasing company or
11 employee leasing company group license have a specified
12 net worth; deleting provisions that authorize alternative
13 methods of determining net worth; revising provisions
14 requiring maintenance of net worth; authorizing certain
15 financial statements to be prepared on a consolidated or
16 combined basis; deleting provisions authorizing certain
17 companies to submit financial statements that are reviewed
18 rather than audited by a certified public accountant;
19 requiring that an employee leasing company provide written
20 notice to leased employees under certain circumstances;
21 amending s. 468.529, F.S.; requiring that an employee
22 leasing company make certain information available to the
23 Department of Financial Services; revising procedures for

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24 notices of initiation and termination of an employee
25 leasing company contract with a client company;
26 prescribing circumstances under which a person becomes a
27 leased employee; amending s. 627.192, F.S.; requiring a
28 workers' compensation insurer providing coverage for
29 employee leasing companies to provide certain information
30 to the rating organization; requiring a report by the
31 rating organization to the lessee under certain
32 circumstances; requiring workers' compensation coverage
33 for leased employees; providing an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Subsection (2) of section 468.521, Florida
38 Statutes, is amended to read:

39 468.521 Board of Employee Leasing Companies; membership;
40 appointments; terms.--

41 (2) Five members of the board shall be chosen from
42 individuals already engaged in the employee leasing industry and
43 must be licensed pursuant to this part. One of the licensed
44 members must be in an employee leasing company that has an
45 annual gross Florida payroll for its leased employees which is
46 among the smallest 20 percent of licensed employee leasing
47 companies in the state at the time of the member's appointment
48 and each reappointment. The remaining two board members shall be
49 residents of this state and must not be, or ever have been,
50 connected with the business of employee leasing. One of the
51 remaining two board members must represent small employers, and

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52 | the other remaining board member must have experience in the
53 | field of insurance regulation.

54 | Section 2. Subsection (3) and paragraph (f) of subsection
55 | (4) of section 468.525, Florida Statutes, are amended to read:

56 | 468.525 License requirements.--

57 | (3) Each employee leasing company licensed by the
58 | department shall have a registered agent for service of process
59 | in this state and at least one licensed controlling person. In
60 | addition, each licensed employee leasing company shall comply
61 | with the following requirements:

62 | (a) The employment relationship with workers provided by
63 | the employee leasing company to a client company shall be
64 | established by written agreement between the leasing company and
65 | the client, and written notice of that relationship shall be
66 | given by the employee leasing company to each worker who is
67 | assigned to perform services at the client company's worksite.

68 | (b) An applicant for an initial employee leasing company
69 | license or employee leasing company group license shall have a
70 | tangible accounting net worth of not less than \$100,000 in
71 | accordance with generally accepted accounting principles
72 | \$50,000.

73 | ~~(c) An applicant for initial or renewal license of an~~
74 | ~~employee leasing company license or employee leasing company~~
75 | ~~group shall have an accounting net worth or shall have~~
76 | ~~guaranties, letters of credit, or other security acceptable to~~
77 | ~~the board in sufficient amounts to offset any deficiency. A~~
78 | ~~guaranty will not be acceptable to satisfy this requirement~~
79 | ~~unless the applicant submits sufficient evidence to satisfy the~~

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80 ~~board that the guarantor has adequate resources to satisfy the~~
81 ~~obligation of the guaranty.~~

82 (c)~~(d)~~ Each employee leasing company and employee leasing
83 company group shall maintain at all times after licensure an
84 accounting net worth of at least \$100,000 and positive working
85 capital, as determined in accordance with generally accepted
86 accounting principles, or shall have guaranties, letters of
87 credit, or other security acceptable to the board in sufficient
88 amounts to offset any deficiency in net worth or working
89 capital. A guaranty will not be acceptable to satisfy this
90 requirement unless the licensee submits sufficient evidence, as
91 defined by rule, that the guarantor has adequate resources to
92 satisfy the obligation of the guaranty. In determining the
93 amount of working capital, a licensee shall include adequate
94 reserves for all taxes and insurance, including plans of self-
95 insurance or partial self-insurance for claims incurred but not
96 paid and for claims incurred but not reported. Compliance with
97 the requirements of this paragraph is subject to verification by
98 department or board audit.

99 (d)~~(e)~~ Each employee leasing company or employee leasing
100 company group shall submit annual financial statements audited
101 by an independent certified public accountant, with the
102 application and within 120 days after the end of each fiscal
103 year, in a manner and time prescribed by the board. The
104 financial statements may be prepared on a consolidated or
105 combined basis.~~, provided however, that any employee leasing~~
106 ~~company or employee leasing company group with gross Florida~~
107 ~~payroll of less than \$2.5 million during any fiscal year may~~

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108 ~~submit financial statements reviewed by an independent certified~~
109 ~~public accountant for that year.~~

110 (e)~~(f)~~ The licensee shall notify the department or board
111 in writing within 30 days after any change in the application or
112 status of the license.

113 (f)~~(g)~~ Each employee leasing company or employee leasing
114 company group shall maintain accounting and employment records
115 relating to all employee leasing activities for a minimum of 3
116 calendar years.

117 (4) The employee leasing company's contractual
118 arrangements with its client companies shall satisfy the
119 following conditions, whereby the leasing company:

120 (f) Is obligated to give ~~Has given~~ written notice of the
121 relationship between the employee leasing company and the client
122 company to all each leased employees as to whether the employee
123 leasing company is providing workers' compensation coverage
124 ~~employee it assigns to perform services at the client's~~
125 ~~worksite.~~

126 Section 3. Section 468.529, Florida Statutes, is amended
127 to read:

128 468.529 Licensee's insurance; employment tax; benefit
129 plans.--

130 (1) A licensed employee leasing company is the employer of
131 the leased employees, except that this provision is not intended
132 to affect the determination of any issue arising under Pub. L.
133 No. 93-406, the Employee Retirement Income Security Act, as
134 amended from time to time. An employee leasing company shall be
135 responsible for timely payment of unemployment taxes pursuant to

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136 chapter 443, and shall be responsible for providing workers'
137 compensation coverage pursuant to chapter 440. However, no
138 licensed employee leasing company shall sponsor a plan of self-
139 insurance for health benefits, except as may be permitted by the
140 provisions of the Florida Insurance Code or, if applicable, by
141 Pub. L. No. 93-406, the Employee Retirement Income Security Act,
142 as amended from time to time. For purposes of this section, a
143 "plan of self-insurance" shall exclude any arrangement where an
144 admitted insurance carrier has issued a policy of insurance
145 primarily responsible for the obligations of the health plan.

146 (2) An initial or renewal license may not be issued to any
147 employee leasing company unless the employee leasing company
148 first files with the board evidence of workers' compensation
149 coverage for all leased employees in this state. Each employee
150 leasing company shall maintain and make available to its
151 workers' compensation carrier and the Department of Financial
152 Services the following information:

153 (a) The correct name and federal identification number of
154 each client company.

155 (b) A listing of all covered employees provided to each
156 client company, by classification code.

157 (c) The total eligible wages by classification code and
158 the premiums due to the carrier for the employees provided to
159 each client company.

160 (3) A licensed employee leasing company shall within 7
161 business ~~30~~ days after initiation of an employee leasing company
162 contract with a client company ~~or termination~~ notify, in a
163 format acceptable to the Department of Financial Services, its

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164 workers' compensation insurance carrier, the Division of
165 Workers' Compensation of the Department of Financial Services,
166 and the state agency providing unemployment tax collection
167 services under contract with the Agency for Workforce Innovation
168 through an interagency agreement pursuant to s. 443.1316 of ~~both~~
169 the initiation ~~or the termination~~ of the employee leasing
170 company's relationship with the any client company. A notice of
171 termination of an employee leasing company's contract with a
172 client company shall be provided as set forth in this subsection
173 to those agencies and entities within 7 business days after the
174 employee leasing company's receipt of written notification from
175 the client company that it is terminating the contractual
176 relationship with the employee leasing company or within 7
177 business days after receipt by the client company of the
178 employee leasing company's written notification that it is
179 terminating the contractual relationship with the client
180 company. Such notification must set forth the date of
181 termination of the employee leasing relationship.

182 (4) An initial or renewal license may not be issued to any
183 employee leasing company unless the employee leasing company
184 first provides evidence to the board, as required by board rule,
185 that the employee leasing company has paid all of the employee
186 leasing company's obligations for payroll, payroll-related
187 taxes, workers' compensation insurance, and employee benefits.
188 All disputed amounts must be disclosed in the application.

189 (5) A person applying to become a leased employee shall
190 become a leased employee upon the receipt by the employee
191 leasing company of the written notice provided by the employee

192 leasing company under s. 468.525(4)(f) which is signed by the
 193 applicant acknowledging that the applicant has been informed of
 194 the relationship between the employee leasing company and the
 195 client company, the receipt by the employee leasing company of a
 196 completed application for employment and any additional forms
 197 required by the employee leasing company, or the receipt by the
 198 applicant of the applicant's first paycheck from the employee
 199 leasing company, whichever occurs first.

200 (6)~~(5)~~ The provisions of this section are subject to
 201 verification by department or board audit.

202 Section 4. Subsection (4) of section 627.192, Florida
 203 Statutes, is amended, and subsection (11) is added to that
 204 section, to read:

205 627.192 Workers' compensation insurance; employee leasing
 206 arrangements.--

207 (4) A lessor that applies for coverage or is covered
 208 through the voluntary market shall also maintain and furnish to
 209 the insurer on an annual basis, and as the insurer may otherwise
 210 reasonably require, sufficient information to permit the
 211 calculation of an experience modification factor for each lessee
 212 upon termination of the employee leasing relationship. The
 213 insurer shall report periodically to its rating organization
 214 such information submitted by each lessor. Information accruing
 215 during the term of the leasing arrangement which is used to
 216 calculate an experience modification factor for a lessee upon
 217 termination of the leasing relationship shall continue to be
 218 used in the future experience ratings of the lessor. The rating
 219 organization shall report the experience modification factor for

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220 | a lessee, if that information is available, within 30 days after
 221 | a request for that information is made by the lessee. Such
 222 | information shall include:

223 | (a) The lessee's corporate name.

224 | (b) The lessee's taxpayer or employer identification
 225 | number.

226 | (c) Payroll summaries and class codes applicable to each
 227 | lessee, and, if requested by the insurer, a listing of all
 228 | leased employees associated with a given lessee.

229 | (d) Claims information grouped by lessee, and any other
 230 | information maintained by or readily available to the lessor
 231 | that is necessary for the calculation of an experience
 232 | modification factor for each lessee.

233 | (11) Except as otherwise authorized, a lessor shall
 234 | provide workers' compensation insurance coverage to all leased
 235 | employees of a lessee.

236 | Section 5. This act shall take effect January 1, 2007.